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STATUTORY INSTRUMENTS

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**1992 No. 1852 (S.185)**

**RIGHTS OF THE SUBJECT**

**The Access to Personal Files  
(Housing) (Scotland) Regulations 1992**

*Made* - - - - - *23rd June 1992*  
*Coming into force* - - - - - *20th August 1992*

The Secretary of State, in exercise of the powers conferred on him by section 3(1), (2), (3) and (6) of the Access to Personal Files Act 1987((1)) and of all other powers enabling him in that behalf, and after consultation in accordance with section 3(4) of that Act with such authorities and bodies representing such authorities as he thought appropriate, hereby makes the following Regulations, a draft of which has been laid before and approved by a resolution of each House of Parliament:

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Access to Personal Files (Housing) (Scotland) Regulations 1992 and shall come into force on the twenty-eighth day after the day on which they are made.

(2) These Regulations extend to Scotland only.

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the Access to Personal Files Act 1987;

“appropriate health professional” means—

- (a) the medical practitioner or dental practitioner who is currently or was most recently responsible for the clinical care of—
  - (i) the tenant where he is the subject of the accessible personal information to which access is sought; or
  - (ii) the member of the tenant’s family in respect of whom the tenant is treated as the subject of that accessible personal information,in relation to the matters to which the reequest for access relates;

- (b) where there is more than one such practitioner, the practitioner who is the most suitable to advise on the matters to which the request for access relates; or
- (c) where there is no practitioner available falling within sub-paragraph (a) or (b) above, a health professional who has the necessary experience and qualifications to advise on the matters to which the request for access relates;

“care” includes examination, investigation and diagnosis;

“dental practitioner” means a person registered under the Dentists Act 1984((2));

“health board” means a health board constituted under section 2 of the National Health Service (Scotland) Act 1978((3));

“health professional” means any person listed in the Schedule to these Regulations;

“housing authority” means a local authority, a development corporation((4)) or Scottish Homes;

“medical practitioner” means a person registered under the Medical Act 1983((5));

“National Health Service trust” means a National Health Service Trust established under section 12A of the National Health Service (Scotland) Act 1978((6));

“tenant” means—

- (a) the tenant of a dwellinghouse where the immediate landlord is a housing
- (b) the former tenant of a dwellinghouse where at any time the immediate landlord was a housing authority; or
- (c) any person who is in the process of applying for, or who has applied for, a tenancy of a dwellinghouse from a housing authority.

(2) In these Regulations any reference to a numbered regulation is a reference to a regulation bearing that number in these Regulations and any reference in a regulation to a numbered paragraph is to the paragraph of that regulation bearing that number.

### **Duty as to accessible personal information**

- 3. Subject to these Regulations a housing authority shall, when requested by a tenant,—
  - (a) inform the tenant in writing whether the records kept by the authority contain personal information((7)) which is accessible personal information((8)) of which the tenant is, or under the Act is to be treated as, the subject; and
  - (b) give the tenant access to that accessible personal information.

### **Procedure by tenant**

- 4. A request by a tenant under regulation 3—
  - (a) shall be made to the housing authority in writing; and
  - (b) shall be accompanied by—
    - (i) such information as may be required by the housing authority to establish the tenant’s identity and to enable them to locate any accessible personal information; and

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(2) 1984 c. 24.

(3) 1978 c. 29; section 2 was amended by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), Schedule 9, paragraph 19(1) and (2).

(4) “local authority” and “development corporation” are defined in paragraph 2(2) of Schedule 2 to the Act.

(5) 1983 c. 54.

(6) 1978 (c. 29); section 12A was inserted by section 31 of the 1990 Act.

(7) “personal information” is defined in section 2(2) of the Act.

(8) “accessible personal information” is defined in section 2(3) and (4) of the Act.

- (ii) such fee, if any, not exceeding £10 as the housing authority may require.

### **Compliance with duty**

- 5. A housing authority shall comply with regulation 3—
  - (a) either—
    - (i) by supplying the tenant with a copy of the accessible personal information to which access is sought; or
    - (ii) by giving the tenant access to that accessible personal information by means other than providing him with a copy of it, but in such a case they shall also supply him with a copy of it unless the tenant informs them that he does not wish to have it; and
  - (b) in either case, within 42 days from—
    - (i) the date of a request and the information and fee referred to in regulation 4(b); or
    - (ii) the date of the notice asking for consent under regulation 8(1); or
    - (iii) the notice about health under regulation 9(1),whichever is the latest.

### **Further provision as to accessible personal information**

6.—(1) Accessible personal information shall be that held at the time when a request is received, subject to any rectification or erasure made between then and the time when a housing authority comply under regulation 5 with their duty, if that rectification or erasure would have been made regardless of the receipt of the request.

(2) Where a copy of accessible personal information is supplied to the tenant in terms which cannot easily be understood without explanation the copy shall be accompanied by a written explanation.

### **Exemptions**

7. The exemptions in regulations 8 to 11 apply except in relation to any part of the accessible personal information to which access can be given without there being a breach of those exemptions.

### **Exemption as to another individual**

- 8.—(1) Subject to paragraph (5), where accessible personal information—
  - (a) contains personal information other than that of which the tenant is or under the Act is to be treated as the subject; and
  - (b) could reasonably be expected to identify any other living individual, including an individual who is the source of the information, who has not consented to the disclosure of that information,

a housing authority, within 14 days of receiving a request and the information and fee under regulation 4, shall notify that other individual if he can be found, that a request has been received for access to accessible personal information containing personal information relating to him and ask him whether he consents to access being given to that information.

(2) The notice to the other individual under paragraph (1) shall contain a statement that if no reply has been sent to the housing authority within 28 days of the date of the notice, the personal information relating to him will be made available to the tenant.

(3) Where the individual who has been informed under paragraph (1) refuses to consent to the disclosure of the information, the housing authority shall not give access to the accessible personal information mentioned in paragraph (1).

(4) Where the individual to whom paragraph (1)(b) applies—

- (a) gives his consent to access being given to the personal information;
- (b) can not be found; or
- (c) has been informed under paragraph (1) but does not respond to the housing authority within 28 days of the date of the authority's notice to him,

the housing authority shall give access to the personal information mentioned in paragraph (1).

(5) Accessible personal information falling within paragraph (1) is not exempt if the only individual who is likely to be identified is or was—

- (a) a member of the tenant's family;
- (b) a health professional who provided the information in his capacity as a health professional having been involved in the care of the person who is the subject of the information; or
- (c) employed by the housing authority in connection with their functions as a landlord, including a person providing for reward services on behalf of the housing authority in connection with those functions.

### **Exemption as to health**

**9.—**(1) Where accessible personal information contains information as to the physical or mental health of the tenant or any other individual and was provided by a health professional the housing authority, within 14 days of receiving a request under regulation 4, shall notify—

- (a) the health board or National Health Service trust concerned if the information was provided by or on behalf of a health professional in the course of his employment (whether under a contract of service or for services) with that health board or National health Service trust; or
- (b) where sub-paragraph (a) above does not apply, the person who appears to the housing authority to be the appropriate health professional,

that a request under regulation 4 has been received and that the accessible personal information contains personal information of the kind mentioned in this paragraph.

(2) On receiving a notification under paragraph (1) the health board or National Health Service trust or the appropriate health professional shall within 28 days of the date of the notice inform the housing authority in writing whether the giving of access would be likely to cause serious harm to the physical or mental health of the tenant or any other individual.

(3) Where the health board, National Health Service trust or appropriate health professional informs the housing authority that the giving of access would be likely to cause serious harm to the physical or mental health of the tenant or any other individual the housing authority shall not give access to the accessible personal information mentioned in paragraph (1).

**10.** Where accessible personal information is not of a kind to which regulation 9 applies but in the opinion of the housing authority the giving of access would be likely to cause serious harm to the physical or mental health of the tenant or other individual the housing authority shall not give access to that information.

### **Other exemptions**

**11.** Where accessible personal information—

- (a) is held by a housing authority for the purposes of the prevention or detection of crime or the apprehension or prosecution of offenders and the giving of access would be likely to prejudice any of those purposes;
- (b) consists of information in respect of which a claim to confidentiality as between client and professional legal adviser could be maintained in legal proceedings; or
- (c) consists of information supplied to the housing authority subject to a legal obligation that it shall not be disclosed,

the housing authority shall not give access to that information.

### **Rectification and erasure**

**12.**—(1) If a tenant who is or is treated as the subject of accessible personal information, regards that information or any part of it as inaccurate in that it—

- (a) is factually incorrect or misleading; or
- (b) consists of an expression of opinion about the tenant or a member of his family which is based on inaccurate information or which implies the existence of facts which are incorrect or misleading,

he may require in writing the housing authority to rectify or erase the inaccurate information.

(2) The tenant shall—

- (a) supply sufficient facts to enable the housing authority to locate the information regarded as inaccurate;
- (b) specify in what respect the tenant regards the information as inaccurate and how the information should be rectified or what part of the information should be erased; and
- (c) provide written evidence, if any, of the inaccuracy of the information.

(3) Where the housing authority are satisfied that the accessible personal information is inaccurate they shall—

- (a) rectify or erase the inaccurate information and where practicable all copies of it; and
- (b) supply the tenant without charge with a copy of the information as amended by the rectification or erasure.

(4) Where the housing authority are not satisfied that the accessible personal information is inaccurate they shall—

- (a) place with that information a written note that the tenant regards it as inaccurate;
- (b) supply the tenant without charge with a copy of the written note and the information to which it relates, and a statement of the reasons for disagreeing that the accessible personal information is inaccurate.

### **Review of decisions**

**13.**—(1) Where a tenant is aggrieved by any decision of a housing authority concerning access to or rectification or erasure of accessible personal information he may within 28 days of his being notified of that decision require it to be reviewed.

(2) Where a review is required under paragraph (1) the housing authority shall ensure that the decision is either—

- (a) reviewed by members of that authority who took no part in making the decision; or
- (b) reconsidered by a meeting of the full authority,

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and the tenant may make written representations to and, accompanied by any representative of his choice, oral representations before, the members or the authority.

St. Andrew's House,  
Edinburgh  
23rd July 1992

*James Douglas-Hamilton*  
Parliamentary Under Secretary of State, Scottish  
Office

## SCHEDULE

Regulation 2(1)

| Health professionals   | Statutory derivation (where applicable)                                       |
|--|---|
| Medical practitioner registered under the Medical Act 1983 <sup>(9)</sup>                | Medical Act 1983, Parts II, III and IV  |
| Registered dentist   | Dentists Act 1984 <sup>(10)</sup> , section 53(1)                             |
| Registered optician  | Opticians Act 1989 <sup>(11)</sup> , section 36(1)                            |
| Registered pharmaceutical chemist  | Pharmacy Act 1954 <sup>(12)</sup> , section 24(1)                             |
| Registered nurse, midwife, or health visitor   | Nurses, Midwives and Health Visitors Act 1979 <sup>(13)</sup> , section 10    |
| Registered chiropodist, dietician, occupational therapist, orthoptist or physiotherapist | Professions Supplementary to Medicine Act 1960 <sup>(14)</sup> , section 1(2) |
| Child psychotherapist, clinical psychologist or speech therapist                         |   |
| Art therapist or music therapist employed by a health board                              |   |
| Scientist employed by such a board as head of department                                 |   |

**EXPLANATORY NOTE***(This note is not part of the Regulations)*

These Regulations provide for access to personal information held by housing authorities ie any local authority, development corporation or Scottish Homes, for any purpose in connection with their tenancies. Access can be obtained by a tenant and for that purpose a tenant means a former tenant or someone who applies to become a tenant.

If a tenant applies in writing, pays any required fee (up to a maximum of £10) and provides sufficient information about his identity and the information to which he wants access the authority must within 6 weeks in most cases and 8 weeks where third parties are involved tell him whether it holds accessible information and give him access to it (regulations 3 and 5). An authority can give access by supplying a copy of the information.

Certain kinds of information are exempt from access (regulations 7 to 11).

Provision is made for the rectification or erasure of inaccurate information (regulation 12).

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<sup>(9)</sup> 1983 c. 54.

<sup>(10)</sup> 1984 c. 24

<sup>(11)</sup> 1989 c. 44.

<sup>(12)</sup> 1954 c. 61

<sup>(13)</sup> 1979 c. 36.

<sup>(14)</sup> 1960 c. 66; section 1(2) was amended by S.I.1966/990 and 1986/630.

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A tenant can require a decision by a housing authority about access, rectification or erasure to be reviewed (regulation 13).